

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MICHAEL WEST,)
)
Petitioner,)
)
v.) No. 4:08-CV-1355-CDP
)
ALAN B. STAHL,)
)
Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court upon review of petitioner's motion for leave to amend his application for writ of habeas corpus under 28 U.S.C. § 2241 [Doc. #7].¹

Having carefully reviewed the motion, the Court finds that any amendment would be futile because, as this Court stated in its Memorandum and Order of December 9, 2008 [Doc. #5], petitioner has not exhausted his available state remedies.² Moreover, in the proposed amended habeas application petitioner is again seeking his immediate release from confinement on the ground that he was denied

¹On December 9, 2008, the Court dismissed the instant action, without prejudice, for petitioner's failure to exhaust available state remedies.

²The Court further notes that in his proposed amended petition [Doc. #7, Attachment #2], petitioner asserts that on July 10, 2008, he filed a Rule 91 habeas corpus action in state court, and that the habeas action is still pending.

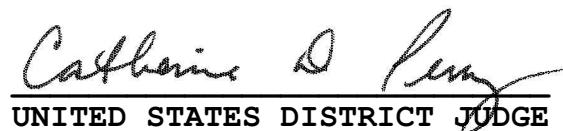
his right to a speedy trial, and as the Court previously explained, the Supreme Court stated in Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493 (1973), that "nothing we have said would permit the derailment of a pending state proceeding by an attempt to litigate constitutional defenses prematurely in federal court." Because petitioner will have the opportunity to raise constitutional challenges in the context of his state criminal proceedings, and if necessary, subsequent appeal(s) and post-conviction motions, he has failed to exhaust available state remedies. For these reasons, the Court will deny the instant motion to amend.

Accordingly,

IT IS HEREBY ORDERED that petitioner's motion for leave to amend his application for habeas corpus relief under 28 U.S.C. § 2241 [Doc. #7] is **DENIED**.

IT IS FURTHER ORDERED that petitioner is **DENIED** a certificate of appealability if he appeals this order.

Dated this 19th day of December, 2008.


Catherine D. Leng
UNITED STATES DISTRICT JUDGE